EDITOR'S NOTE

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Smith v. Francis (2) 84-6780 Appendix

THE COURT: Can we excuse him and let him go back and see about our children?

MR. KEEBLE: Yes, sir.

THE COURT: All right. You're excused. Call your next witness.

(Witness excused)

MR. KEEBLE: Your Honor, the defense would call Dr. Everett Kuglar.

DR. EVERETT CLARK KUGLAR

called as a witness in behalf of the defendant, first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KEEBLE:

Q Would you state your full name for the record, please?

A My name is Everett Clark Kuglar.

Q And what is your position with the State of Georgia, Dr. Kuglar?

A I am Superintendent of the Georgia Regional Hospital at Augusta, in Augusta.

Q And you are a medical doctor?

A Yes, I am a medical doctor.

Q What is your medical specialty, sir?

A My medical specialty is that of psychiatry.

Q Dr. Kuglar, if you will, would you give us a background as to your formal education, please, sir?

MR. TISE: If Your Honor please, the State is very familiar with Dr. Kuglar's qualifications and his expertise in this area, and we would stipulate to them.

THE COURT: All right. The doctor is stipulated as an expert. You may proceed.

Q And you are a psychiatrist, Doctor?

A Yes.

Q Now, Dr. Kuglar, did you on occasion have a opportunity to examine a one William Alvin Smith?

A Yes, I have examined William Alvin Smith.

Q And I will refer you to the defense table to the young man with the dark blue knit shirt. Is that the same young man that you examined?

A Yes.

Q Would you tell the ladies and gentlemen on how many occasions that you examined this young man, Doctor?

A I personally examined him on two occasions, one being July the 31st of this year, and again yesterday, September the 14th.

Q So you examined him yesterday afternoon?

A Yes. That's correct.

Q Approximately how long did your examination of this young man take place on July 31st of this year?

A Approximately one hour.

Q All right. And your examination yesterday?

A Oh, I would say roughly twenty to thirty minutes. This was my personal examination. Other psychological and medical tests were done.

Q So other psychological and testing was done at your request and under your supervision, is that correct, Doctor?

A That is correct.

Q And I would assume that you reviewed these records and agreed with the analysis contained therein?

A That is correct.

Q Now, Doctor, I will refer you, if you will, to your letter under date of August 18, 1981. In a portion of your letter, Doctor...and, of course, you can fully explain any contents of that letter that you wish. But you said that Mr. Smith complained of "frequent headaches and dizzy spells".

A That is correct.

Q He made specific complaints of this to you?

A Yes.

Q And, in your evaluation, what did you find as a result of these complaints, Doctor?

A Well, as a result of his making this specific complaint, we did an electroencephalogram which is a brain...so-called brain wave test which measured the electrical conductivity and impulses from the brain. It usually picks up any gross abnormalities that are found within the brain tissue, at least the cortical brain tissue. This was normal. We also had him evaluated by Dr. Harold

Collins, a Board Certified Neurologist, who could find no neurological abnormalities.

Q All right. Now, Doctor, let me ask you this. From this type examination, would any evidence of mental retardation show up from this examination?

A From the brain wave test, no. He also received, as part of our evaluation, a Wechsler Adult Intelligence Test, commonly called a Wais .

MR. KEEBLE: Can all of you gentlemen hear Dr. Kuglar? You can't?

Q Doctor, I do apologize. We're having a little trouble with our system and I would ask... Some of the jurors are having difficulty hearing you. So, if you would, just speak up a little bit more.

A All right.

Q You said some other tests were run.. Excuse me. What was your answer to the last question, Doctor?

A I think what you had asked me was that would the test we were talking about pick up mental retardation or the individual's intelligence, and I answered that question by saying, no, that the brain wave test, nor the X-rays, nor the neurological examination, which would pick up any organic illness in the brain, would not pick up one's intelligence or IQ. Then I said that we also did a Wechsler Adult Intelligence Test, commonly called a Wais , on this individual in order to ascertain his intelligence.

Q So this test was conducted on this individual?

A Yes.

Q All right. Now, Dr. Kuglar, do you have the results of that examination?

A Yes, we do.

Q And what were your findings in this regard?

A The Wechsler Adult Intelligence Test is divided into two sections. One is verbal skills. The other are performance skills, or the potential to remember, figure out new situations, to calculate, et cetera. Therefore, we have two subsections, each scored separately and then averaged. On his verbal IQ, this was 71, his verbal skills. This is in the upper range of mild retardation at the borderline range of normal. His performance skills were measured at 61, which is in the range of very mild retardation. And his full-scale score of 65 is in the mildly retarded, the upper limits of the mildly retarded range.

Q Now, Doctor, from your experience and from your training, do you have an opinion as to what a mental age of someone with this IQ would be?

A Mental age, by the use of IQ tests, is figured on 16 as being average. That is, that when an individual reaches roughly the age of 16, from that particular point on, you give them the same test and you do not expect test results to be related to age. So 16 is the average. If you talk about a very bright individual, you would talk about a score like 18. Okay.

Most of the people that you test, you talk about 16 as being the average. This particular individual would test somewhere between 10 and 11 as a mental age. That is, that the logic, the calculation abilities, planning abilities, the ability to perceive things is roughly that of a youngster in the 10 to 11 year age range. Remember, though, that 16 would be the average for most adults.

Q Now, of course, Doctor, you did find that this young-- and here ,again, I refer to your letter -- Well, Mr. Tise may want to cross examine you on that. That's all the questions I have, Doctor, at this time.

MR. KEEBLE: That's all I have at this time, Your Honor.

THE COURT: All right, Mr. Tise.

CROSS EXAMINATION

BY MR. TISE:

Q Doctor, you evaluated the defendant in this case to determine if he was competent to stand trial, did you not?

A That was part of the evaluation, yes, sir.

Q That was part of your evaluation?

A Yes, sir.

Q What were the points used to determine if the defendant was capable to stand trial at this time?

A There are four major points considered when we talk about a person being competent to stand trial. One point is that the person must be able to become aware or is aware of the charges against him. Another point is that he must have a reasonable or

be able to reasonably understand the legal process in criminal or trial proceedings. Another point is that an individual must be able to understand the possible consequences of being found guilty with a crime or with an alleged crime of which they're charged. Another point is that they must have skills, communication skills enough to communicate with their attorney in preparing or helping to prepare their defense. And the fourth point, which is an unwritten point, is that they must not be so psychotic or retarded that they basically cannot understand what is happening. Their contact with reality must be good enough that they understand what is happening in any criminal proceedings against them.

Q And what were your findings?

A We felt that Mr. Smith basically met all of the points for being competent to stand trial as a result of our complete evaluation.

Q Now, Doctor, during your examination, were you able to tell if the defendant knew right from wrong?

A Yes. One of the other points that we are asked to look into is the person's mental state to ascertain if they are able, one,at the time we examine them, to ascertain right from wrong in relation to any alleged illegal act which they may have committed. The other is to look to see if they have the type of mental illness where they may have been mentally ill in the past but not be at the time we examine them, which would reduce responsibility under Georgia Law.

Q What was your finding in this area?

A At the time we examined him, we could find no evidence that significant mental illness had existed in this individual in the past and that he was able to determine right from wrong at the time of our evaluation.

Q How about at the time of this incident?

A As I say, we could find no evidence of any type of mental or brain disorder which would have existed in the recent past. We examined him approximately five to six weeks after the alleged act.

Q All right. Now, did you find any delusional compulsion, anything of that nature, that would make this defendant commit such an act?

A No, sir. We could find no evidence of delusions or compulsions, or delusional compulsions.

Q Any mental disorder?

A We could find no evidence of any mental disorder present other than the mild mental retardation.

Q Any mental disease?

A No, sir. We could not find any of this.

Q Any defect whatsoever?

A As I say, with the exception of the mild mental retardation, we could find no evidence of any mental or brain disorder.

Q Were you able to determine his criminal responsibility

in this matter? Was he responsible for his act?

A It would be our opinion, as we understand the Georgia Code, that this individual would be responsible for any criminal act he may have committed.

Q Now, Doctor, approximately how many people are there, say in the United States, that can be found under the same criteria as this defendant?

A I assume by this you mean who has his approximate amount of intelligence, an IQ in the 60 to 70 range.

Q Yes, sir.

A Somewhere in the ballpark of ten per cent of the population in this country has an IQ in that range.

MR. TISE: Thank you, Doctor.

THE COURT: Can we excuse the Doctor, gentlemen?

MR. KEEBLE: Yes, sir.

MR. TISE: The State has no objection.

THE COURT: You may go, Doctor. Thank you. Call your next witness.

(Witness excused)

MR. KEEBLE: Your Honor, I would call the defendant to the stand.

THE COURT: Very well. You may come to the stand, Mr. Smith.

We appreciate you coming, Doctor.

DR. KUGLAR: Thank you, sir.

APPENDIX E

WILLIAM ALVIN SMITH

called as a witness in his own behalf, after having first been duly sworn by Mr. Keeble, testified as follows:

DIRECT EXAMINATION

BY MR. KEEBLE:

Q Now, I will call your attention to June the 8th of this year. Do you remember that day?

A Yes.

Q Where did you stay the night before, William?

A At home.

Q After you got up, what did you do?

A I ate, like I always do.

Q You ate and what?

A I ate and then I left.

Q And where did you go?

A Up to my aunt's house.

Q And who is that?

A Ruby Dorsey.

Q How long did you stay over there?

A Not long.

Q And then where did you go?

A I went to Johnny Howard's house.

Q Who is he?

A He's a friend of ours.

Q And what did you do over there?

A Nothing, but got some water; sat around, you know, and talked.

Q Sat around and talked?

A Yes, sir.

Q And, about what time was it that you left there?

A A few minutes after I got there.

Q You don't know what time it was?

A No.

Q Were you walking?

A Yes.

Q In relation to Lexington, where does he live?

A Fairground.

Q Fairground community?

A Yes.

Q And you left walking?

A Yes.

Q And where did you go then?

A I started walking towards town like I always do, and went through Black Bottom. And, on the way to Mr. Dan's Store, I said I'd stop and get me a pack of cigarettes because I didn't have no cigarettes.

Q Now, how far was it from that, the last place you was. You walked all the way to Mr. Dan's place?

A Yes.

Q And how far is that? Do you know?

A No, not exactly.

Q Okay. Now, when you got to Mr. Dan's place, tell the ladies and gentlemen of the jury what happened.

A Well, I went in there like I always do. I got in the store and he was laying up..you know, sometimes he'd be asleep in the chair, like he always do. And he woke up and he looked at me and he didn't speak to me like he usually do. I asked him for a pack of cigarettes, and he said, "What kind?" I said, "Winstons." So he went to get the cigarettes and, when he retched at the cigarettes, I retched at him and ...

Q Wait a minute. You retched (sic) at him?

A Yes.

Q What do you mean by that?

A You know, when he retched at the cigarettes, I retched at him, you know, just... Then he, you know, had the hammer and, when he grabbed that hammer, you know, he started forcing his self, you know, and I got carried away.

Q You got carried away? What did you do?

A All I know, I was stabbing. That's all. He said something to me, but I don't know what he said.

Q And then what did you do?

A Well, he started back to the back and then he fell, and, when he fell, the hammer, it fell, too, and I guess I picked the hammer up and hit him with it.

Q Then what did you do?

A Then I went to the door. That's when I saw Willie Robertson.

Q Do you remember what you said to him?

A No, not quite. It happened so quick to me, I didn't know.

Q And, then what did you do?

A Well, I went back in the store and then I retched down in his pocket and got his pocketbook out. And then I went in the cash register and got that money, and then I started running.

Q You started running?

A Yes.

Q Had you planned to rob Mr. Dan when you went in that store?

A No. I... See, I usually walk all the time, anyway. When I got...you know, when I got to the store, I went in there just like I always do, I told you. Because I have been in there when he wasn't even in the store and didn't touch a thing. That morning, I got in the store and, as he moved, I moved -- just like that.

Q Now, you ran?

A Yes.

Q Where did you run to?

A To the woods in Black Bottom.

Q About how far away is that from Mr. Dan's store?

A I couldn't say. It was a few blocks from there.

Q Now, William, when you were in school, you had special

classes? Is that right?

A Yes.

Q You don't know what kind of classes they were?

A I know that, you know, I was... Like I told him, I wasn't bright, but I wasn't dumb, either, you know. But I was slow on learning. Some of the things, I didn't...the words and stuff I didn't know.

Q And what grade did you drop out in school?

A Ninth.

Q The end of the ninth or the first of the ninth grade?

A First. I didn't go back to school. I completed the eighth but didn't go back to the ninth.

Q So you didn't even go into the ninth grade at all?

A No.

Q And you don't remember what you said to Willie Robinson?

Q Well, he got to the door...he asked me...he said... he asked me what was I doing, you know. And, at first, I didn't said nothing, you know. I looked at him. And I guess he thought I was gonna hit him, too, or something like that. And I told... I said, "Damn," you know. I said, "Damn," and I said... I'm not sure if I told him, "I killed Mr. Dan," or "I think I killed Mr. Dan." But I believe what I said, I told him...I looked at him and I said, "I think I done killed Mr. Dan." And then he looked at me and he said, "What?" Just like that. And he backed

off, you know. That's when he went to the Sheriff.

Q That's when you ran?

A (Nodded head affirmative.)

Q Do you have any other statements you want to say to the jury?

A Yes. I didn't mean to kill Mr. Dan and I ain't had nothing against Mr. Dan or nothing, and I'm sorry I did it. I didn't go on and tell the Sheriff that. I told myself that when I was in the bushes, when I run. I stopped and thought about it and I cried, you know, because it hurt me because Mr. Dan been knowing me and my folks as long as I can remember. And he ain't never said nothing smart or, you know, nothing to us or nothing. He always have been good to me. I can say that. And I have went in there when he was out of the store and waited I don't know how many minutes for him to come back. When he come back, he always, you know, looked at me and... I remember being there two or three days before this, you know, and he was on the outside by the drink machine. And there was some birds and stuff out in the yard, you know, and, you know, me and him sat out there and laughed at it for a while. And he asked me about my aunt Florene, the one that stays in Atlanta. Most every time I go up there, he always asks me about my aunt. He knowed my aunt and mama and them when they was little, you know. They used to come in the store. I never intended to kill him. I didn't even intend to touch him. That's all I've got to say.

MR. KEEBLE: Mr. Tise.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. TISE:

Q You say Mr. Turner was asleep when you went in the store?

A Yes, sir.

Q Where was he sleeping at?

A In the chair where he always reads the paper at.

Q Did you wake him up?

A Well, you know, when I walked in, you know...he usually wakes up when someone walks in, you know. He jumps kinda. And he jumped up, you know, fixing to get my cigarettes. He asked me, said, "What you wanted?" And I told him and he jumped up and went for the cigarettes.

Q When did you pull your knife out?

A Right after...well, when I...I don't remember quite, but I looked at it... After I got in the store and when I retched (s at him, I remember seeing the hammer in his hand. I don't know where he got it from, you know, it happened so quick. I remember seeing the hammer and he was forcing me.

Q He was what?

A Forcing me, you know. When I touched him, he kinda, you know, just like he knowed what was happening or something, you know. And...

Q Why did you touch him?

A I don't know.

Q And he had the hammer in his hand?

A Not at first, but, after I touched him, he did.

Q After you touched him?

A Yes, sir.

Q With your knife?

A No, with my hand.

Q With your hand? Was he on the other side of the counter?

A Then he was, yes, sir.

Q And you reached over and touched him?

A Yes, sir.

Q You don't know why you reached over?

A No.

Q And he had the hammer in his hand?

A Not then.

Q Not then? When did he get the hammer?

A Right after I...well, when I touched him and then, you know, he looked at me. And then, when he turned around, you know, he had the hammer. I don't know where the hammer come from, off the counter or from where, you know. Then I just started stabbing him.

Q When did you pull the knife out?

A Right after he had the hammer, I saw the hammer.

Q Why did you pull the knife out?

A I don't know.

Q You stabbed him first when his back was away from you?
A Yes.
Q Huh?
A Yes.
Q So he was reaching for the cigarettes when you stabbed him in the back the first time?
A No.
Q When did you stab him in the back?
A When I touched him at first, I saw the hammer and his back was still turned.
Q His back was still turned?
A Right.
Q He wasn't facing you?
A No. Only, when he turned around, when I stabbed him, then he switched around and looked at me and he said something to me. And that's when I kept on.
Q You stabbed him in the back first and then he turned around, is that right?
A No. I didn't stab him in the back first. I grabbed him first.
Q You grabbed him first?
A Yes.
Q Where did you grab him?
A I touched him on the shoulder.
Q A minute ago you said you stabbed him in the back and

he turned around?

A No, I didn't say that. I said I touched him on the shoulder. Then I saw the hammer, and then, when I started stabbing him, his back was still turned. And then he started, you know, like he knowed...after I touched him, then he started.. he kept running back to the back and then I was still stabbing him. Then my knife broke and cut my hand. Then that's when the hammer fell out of his hand and I took it and hit him up side the head with it.

Q I show you State's Exhibit No. 11. Is that the knife blade or does it look like it? Does it?

A Yes.

Q Did he have the hammer in his hand when he was running back to the back of the store?

A Yes, sir.

Q I show you State's Exhibit No. 10. Is this the hammer?

A Yes.

Q Which side did you hit him on?

A I don't remember.

Q So it's your testimony that he woke up and you told him you wanted some cigarettes; he went up and got the cigarettes; at that time, you touched him and he had the hammer in his hand at that time?

A Not at that time.

Q Oh, he didn't?

A Not at that time.

Q Okay. When did he get the hammer?

A I don't know. I didn't see. I wasn't even aware of it, I'm telling you. All I know, he had the hammer. I saw the hammer but I didn't know where he got it from or what.

Q Was he facing you when you stabbed him the first time?

A No. He had his back to me.

Q Had his back to you. How many times did you stab him in the back? Do you remember?

A I don't know.

Q You don't know?

A No.

Q How many times did you stab him in the front?

A I don't know.

Q Did you follow him to the back of the store?

A I didn't... well, you know, it was... He didn't just go back there and fall. You know, all the while I was stabbing him, I was with him, you know.

Q The whole time he was going to the back of the store to the back door, you were right behind him stabbing him, wasn't you?

A Yes, sir.

Q And then, when he fell, you got the hammer and hit him in the head, didn't you?

A No. When he fell, I was still stabbing him.

Q When he fell, you were still stabbing him?

A Yes.

Q Then, after you finished stabbing him, you picked up the hammer and hit him?

A Yes.

Q This statement, which is marked as State's Exhibit No. 7, would you look at that, please?

A (Examining document)

Q Do you remember making that statement?

A Yes.

Q Is it true?

A Yes.

Q And correct?

A This part is true, but I mean...I said...I told them exactly what he put on here, but I didn't mean it right that way on the back.

Q On the back?

A Yes.

Q What are you referring to? Where it states the reason you did it was to get some money?

A Yes.

Q For a car? You didn't say that?

A I said it but I didn't mean to say it that way.

Q How did you say it?

A I can't remember how, you know, it was.

Q You can't remember what you said or how you meant it?

A Yes, sir.

Q How did you mean it?

A I don't know at that time.

Q You went up there to rob Mr. Turner --

A No.

Q -- and get that money to pay for a...to get a car, didn't you?

A No.

Q Did you leave the store with the hammer?

A Yes, sir.

Q Did you go up there to rob Mr. Turner?

A No.

Q Did you leave the store with this hammer?

A Yes.

Q And, when you left, you had it wrapped in your shirt, is that right?

A Yes.

Q Why did you do that?

A It was wrapped in the shirt, anyway, after I...You know, when I had the hammer...I still had the hammer and I got up. I don't know. I just didn't turn it loose. I just kept it. And then my hand...it got hooked up with my hand and I took and wrapped my hand up in my... The hammer was wrapped in my hand...was in my hand. I wrapped it up...wrapped my hand up where I cut it at,

and, you know, all at the same time, the knife... I mean the hammer was in my shirt, too, when I throwed it. I just shoved it off.

Q State's Exhibit No. 2 is the wallet you got from Mr. Turner?

A Yes.

Q How much money did you get out of it?

A I don't know. I didn't count it.

Q I show you what's been marked as State's Exhibit No. 5. Did you take any money out of that cash register?

A Yes.

Q You did?

A Yes.

Q Now, you say you went to the...somebody came up to the store and you went to the front door. Is that right?

A Yes.

Q Had you already stabbed and hit Mr. Turner over the head by that time?

A Yes.

Q And you told this individual that you had just...you said, "Damn. I just killed Mr. Turner?"

A (Nodded head affirmatively)

Q And you told that individual not to say anything, didn't you?

A Yes, because I was scared.

MR. TISE: No further questions, Your Honor.

THE COURT: You may come down, Mr. Smith.

(Witness dismissed)

THE COURT: Call your next witness.

MR. KEEBLE: The defense rests, Your Honor.

THE COURT: Very well. Let me see counsel up here.

(A conference was held between The Court and counsel at the Bench, as follows:)

THE COURT: Do you have any rebuttal testimony?

MR. TISE: No, sir.

THE COURT: I think what I will do, I will let the jury go to the jury room and I'll review this Unified Appeal matter with y'all.

MR. KEEBLE: Yes, sir.

THE COURT: Then we will go over the charge. Is that agreeable with you all?

MR. KEEBLE: Certainly, Your Honor.

THE COURT: Sheriff, I'm gonna let the jury go to the jury room and I'm gonna be back in Chambers going over the charges and the rest of this Unified Appeal, so you all can keep the defendant here or take him back over there if you want to. We'll be in recess for a while. Okay?

SHERIFF SMITH: Yes, sir.

MR. TISE: We'll need the defendant in Chambers to ask

APPENDIX F

CHARGE OF THE COURT

Ladies and gentlemen of the jury, you have been trying the case of the State of Georgia versus William Alvin Smith in Oglethorpe Superior Court, No. B-2540. This case arrived before you as the result of an indictment from the grand jury of this county. And this indictment in its material portion is, as follows. The first part lists the names of the grand jurors and then it says as to count one: "In the name and behalf of the citizens of Georgia, charge and accuse William Alvin Smith, hereinafter referred to as the accused, with the offense of murder, a felony, for that the said accused, on the 8th day of June, 1981, in the county aforesaid, did then and there unlawfully and with force and arms, and with malice aforethought, cause the death of Daniel Lee Turner, a human being, by subdural hematoma secondary to blunt force trauma to the head, contrary to the laws of said state, the good order, peace and dignity thereof." Count two: "And the grand jurors aforesaid, in the name and behalf of the citizens of Georgia, do further charge and accuse William Alvin Smith, hereinafter referred to as the accused, with the offense of armed robbery, a felony, for that the said accused, on the 8th day of June, 1981, in the county aforesaid did then and there unlawfully and with force and arms, with intent to commit a theft, take property of value, to wit, cash money property of Turner's Standard Service Station,

indictment

Lexington, Georgia, from the person and immediate presence of Daniel Lee Turner, by the use of an offensive weapon, to wit, a knife, contrary to the laws of said state, the good order, peace and dignity thereof."

Now, ladies and gentlemen of the jury, to this indictment the defendant, William Alvin Smith, has entered and filed his plea of not guilty. Neither this indictment, nor the defendant plea of not guilty,are evidence in this case and you are not to regard or consider it as such. Together, however , they form the issues which you are to determine. The defendant enters upon the trial of this case with the presumption of innocence in his favor, and that presumption remains with him throughout the trial until and unless the State carries the burden of proving the material allegations of this indictment beyond a reasonable doubt. The burden of proof never shifts to the defendant. In determining whether the State has carried this burden, you should consider all of the evidence which has been introduced here before you during this trial.

Now, I charge you, ladies and gentlemen of the jury, that not only is this indictment and the not guilty plea on it not evidence, neither is the statement and summation of counsel evidence, that is, the lawyers, and you will not consider that what they've said is evidence. Like this indictment and the plea of not guilty, this is the manner

in which the law gives to you to assist you in determining from the evidence what the true facts are in this case. And that is your job, to determine what the true facts are, as you apply the law that I give you in charge to those facts.

Now, ladies and gentlemen of the jury, I will define for you the phrase reasonable doubt. A reasonable doubt means exactly that. It is a doubt based on reason and for which a reason can be given. A reasonable doubt may arise through a consideration of the evidence, or because of a lack or insufficiency of the evidence.

I will now charge you and define for you some things that a reasonable doubt is not. A reasonable doubt is not a vague or conjectural doubt. It is not an imaginary doubt, or arbitrary doubt. It is not a capricious or fanciful doubt. Neither does it mean, ladies and gentlemen, a possibility that the defendant may be innocent, but it means a doubt for which you can assign a specific reason and a specific reason can be given.

Now, ladies and gentlemen, while the law requires the State to prove the defendant's guilt on each count beyond a reasonable doubt, yet, the law does not require the State to prove the defendant's guilt to an absolute or mathematical certainty. Moral and reasonable certainty is all that can be expected and all that is expected in a legal investigation such as this.

I charge you that in a criminal case like this the law makes you the judges of the facts and the law. The facts you obtain from the evidence produced to you throughout the trial. The law you obtain from The Court as I give it to you in charge. I instruct you that any verdict that you render in connection with this case now before you for determination should be arrived at from those facts and those facts only as you find them to be, and applying to those facts the law as I give it to you in charge.

Now, ladies and gentlemen, you are made by law also the exclusive judges of the credibility of the witnesses and the weight you shall give their testimony. And this applies to all the witnesses that came up and sat in the witness chair.

In determining their credibility, you may consider all of the facts and circumstances of the case. You may consider the witnesses' manner of testifying. You may consider their intelligence; you may consider their means and opportunity that they have of knowing the facts to which they testify, and the nature of the facts to which they testify; and the probability or improbability of their personal credibility insofar as the same may legitimately appear from the trial of this case before you.

The law also directs, ladies and gentlemen, that it shall be your duty to reconcile all conflicting testimony, if there is such in this case, whenever it can be done, so that all the

witnesses may be made to speak the truth and perjury imputed or attributed to none. But, if there is any testimony in th case which is in such irreconcilable conflict that this cannot be done, then it would be your duty to believe the evidence which seems most reasonable and believable to you considering all the facts and circumstances of this case.

Now, ladies and gentlemen of the jury, I charge you tha to impeach a witness is to show to the satisfaction of you, the jury, that such witness is unworthy of belief. A witness may be impeached by disproving the facts testified to by him or her, or by proof of contradictory statements previously made by that witness as to matters relating to his or her testimony and to the case. When a witness shall have been successfully contradicted as to a material matter, that witness's credibility as to other matters shall be for you, the jury, to determine. But, if a witness shall swear wilfull and knowingly false, you have the right, though not the duty, to reject this testimony in its entirety, unless you find th this testimony is corroborated by other impeached evidence. The credit to be given to a witness's testimony and whether or not an effort has been made to impeach a witness, and whether or not that effort was successful is a question that would be for you, the jury, to determine. In the final analysis, the weight and credit to be given any evidence is a question for you, the jury, to determine.

Now, ladies and gentlemen, I charge you that a crimina intent is a material and necessary ingredient in any crimina prosecution. I charge you that the acts of a person of soun mind and discretion may be inferred. But, in any event, the State has the burden of proving beyond a reasonable doub as I have defined for you, each and every material allegatio in both counts of the indictment.

I charge you further that a person will not be presumed to act with criminal intention, but you, the jury, may find such intention upon a consideration of the words, conduct, demeanor, motive and all other circumstances connected with the act or acts for which the accused in this case is prosecuted. You are the triers of the fact. Therefore,it is a question of fact solely for your determination as to whether or not there was a criminal intention on the part of the defendant, considering all the facts and circumstances, as disclosed by the evidence,and deductions which might reasonably be drawn from those facts and circumstances. While a criminal intent may be proven in more than one way, the question of whether the defendant did act with criminal intention is finally and always a question for you, the jury, to determine.

Now, ladies and gentlemen of the jury, evidence is basically of two kinds --direct evidence and indirect, or, as we sometimes call it, circumstantial evidence. Direct evidence

is that which immediately points to the question at issue. Indirect, or circumstantial evidence, is that which only tends to establish the issues by proof of various facts sustaining by their consistency the hypothesis or conclusion claimed.

Now, ladies and gentlemen of the jury, I charge you that, if circumstantial evidence is involved in this case, then you would consider the rule that each separate fact or issue linked to the chain of circumstances from which the deduction of guilt is sought to be drawn must be clearly proven beyond a reasonable doubt. A fact or circumstance not so clearly proven shall not be considered by you, the ju in the chain of circumstances, but should be rejected. The circumstances so proven must be a complete unbroken chain and must not only be consistent with the defendant's guilt, but must exclude every other reasonable hypothesis save that of the guilt of the accused.

Ladies and gentlemen, I charge you further that a crime in this state is a violation of a statute of this state in which there shall be a union or a joint operation of act or omission to act, and intention or criminal negligence.

Now, I charge you, ladies and gentlemen of the jury, that the law permits experts who have special training, knowledge and experience in certain lines to give their opinions as experts based upon their knowledge of particula

facts. The weight which is to be given the opinion of expert witnesses is for you to decide. You may accept it and act on it or reject it and act on your own judgment as you apply it to the evidence in this case.

Ladies and gentlemen of the jury, I charge you further that you may consider whether or not you will draw an inference of guilt from flight or similar acts if proven. Flight or similar acts, if any, is subject to explanation. You decide the weight to be given to it or whether to draw an inference of a consciousness of guilt or not. You decide if there was flight or similar act, and whether it was due to a sense of guilt or for other reasons. And, if for other reasons, no inference hurtful to the defendant should be drawn.

Now, ladies and gentlemen of the jury, I charge you further that an alleged statement by the defendant was admitted into evidence in writing. Before you may consider it as evidence for any purpose, you must first decide two questions as to the statement. First, was the defendant warned of his constitutional rights and did he clearly understand and knowingly give up such rights. And, secondly, was his statement clearly voluntary and freely and willingly given. The rights which must be explained and which must be understood and given up by the defendant before any statement is taken by the law enforcement officers are, as follows:

That he had a right to remain silent. That, if he chose not to remain silent, anything he said, wrote or signed could be used as evidence against him in court. That he had the right to consult a lawyer before any questioning and to have the lawyer present with him at all times during any questioning. And that, if he did not have money for a lawyer, a lawyer would be provided for him by the State to represent him before any questioning and to be present with him during any questioning.

I charge you that to be voluntary a statement must be freely and willingly given with the complete understanding and without threat or use of force, fear or injury, suggestion or promises of liency or reward. A statement induced by the slightest hope of benefit or remotest fear of injury is not voluntary. To be voluntary, a statement must be the product of a free will and not under any compulsion or any necessity imposed by others. The burden of proof is upon the State to establish that the warnings of all the rights mentioned were given, that they were clearly understood and knowingly given by the defendant, and that the statement was voluntary and freely and willingly made. If you find that all of the warnings as to his constitutional rights were given, that the defendant clearly understood the meaning of what was said, and knowingly gave up such rights; and, if you further find that the statement was voluntary, then

you will consider it as evidence and you will apply the general rules for testing the believability of witnesses and decide what weight, if any, you give to all or any part of such statement evidence. However, if you fail to find any one of the conditions which I have just described, you must disregard the statement entirely and give it no consideration in reaching your verdict. You should consider with great caution the evidence of any incriminatory statement by the defendant. In weighing such evidence, you should consider whether the statement was made by the defendant, whether it was truthful, whether it was accurately repeated and written, whether the defendant understood what was said, the circumstanc under which it was made, the emotions of hope or fear that may have existed. The jury may believe admissions or incriminatory statements in whole or in part, believing that which they find to be true, and rejecting that which they find to be untrue. Upon you alone, ladies and gentlemen of the jury, rests the duty to apply the general rules of testing the believability of witnesses, and to decide what weight should be given to all or any part of such evidence.

Now, ladies and gentlemen of the jury, I charge you that a person commits murder when he unlawfully and with malice aforethought, either express or implied, causes the death of another human being. Express malice is that deliberate, intentional, unlawfully to take away the life

of a fellow creature which is manifest by external circumstances capable of proof. Malice shall be implied where no considerable provocation appears and where all the circumstances of the killing show an abandoned and malignant heart.

Count one of the indictment charges the offense of murder. I charge you that a person commits murder when he unlawfully and with malice aforethought, either express or implied, causes the death of another human being. Express malice is that of deliberate intention to take away the life of a fellow creature. Malice would be implied where no considerable provocation appears and all the circumstances of the killing show an abandoned and malignant heart. Legal malice is not necessarily ill will or hatred. It is the intention to unlawfully kill a human being without justification or mitigation, which intention, however, must exist at the time the killing is alleged, but it is not necessary for that intention to have existed for any length of time before the killing. In legal contemplation, a man may form the intention to kill a human being, do the killing instantly thereafter, and regret the deed as soon as it was done. In other words, murder is the intentional killing of a human being without justification or mitigation.

I charge you that, if you believe beyond a reasonable doubt that any time before this bill of indictment was returned and filed in this court by the grand jurors named

therein, that this defendant on trial did kill the person named in the indictment in the manner alleged, and that this killing was with malice aforethought, either express or implied; and further, that the intent to kill such a person was present as a necessary ingredient to such crime, then you would be authorized to find the defendant guilty of murder as charged.

On the other hand, if you have a reasonable doubt, as I have defined for you, as to the defendant's guilt of the offense of murder, then it would be your duty to give him the benefit of that reasonable doubt and acquit him insofar as the charge of murder is concerned.

I charge you, ladies and gentlemen, in regard to the count two of the indictment of armed robbery, the allegation of armed robbery. A person commits armed robbery when, with intent to commit a theft, he takes property of another from the person or the immediate presence of another by actual use of an offensive weapon. The essential elements of the offense that the State must prove beyond a reasonable doubt are, as follows: The taking must have been with a purpose to commit a theft. It must have been against the will of the person robbed, and it must have been by open, menacing immediate threat of or use of an offensive weapon. An offensive weapon is one which, if used in its usual accustomed manner, is likely to produce death. The character of a weapon as

such may be established by direct proof or by other evidence sufficient to establish it to be an offensive weapon. If you find and believe beyond a reasonable doubt that the defendant committed such offense, you would be authorized to find the defendant guilty of armed robbery.

Now, ladies and gentlemen of the jury, I charge you further the act itself may be so utterly senseless and abnormal to furnish satisfactory proof of a diseased mind. In determining the issue of sanity or insanity at the time of the act, the jury may consider the act and the mental condition of the accused as revealed by the evidence before and after the commission of the alleged offense, if any, and the declarations, if any, of the defendant, made at the time of the alleged offense or reasonably close thereto as proof of his mental condition at the time of such alleged crime. Opinion testimony relative to sanity or insanity, either layman or expert, is by no means conclusive upon this issue and is particularly dependant upon the facts or evidence supporting such opinions or evidence. The weight to be given such opinion is solely for you, the jury, to determine. Thus, if you find the defendant did not have reasonable sufficiency to distinguish between right and wrong because of mental disease, injury or congenital deficiency, and that he acted as he did because of delusional compulsion, as I have instructed you, at the time of the commission of

such alleged offense, that would be an end of your consideratio of this case and you would stop at that point and enter a verdict that would reflect your findings. And the form of that verdict would be, "We, the jury,find the defendant not guilty by reason of insanity."

Should this be your verdict, The Court charges you that the law of this state provides that it shall thereupon become the duty of the trial Judge to retain jurisdiction of the person and to order that person confined in a state hospital for the mentally ill. However, if, upon a considerati of the evidence, you determine that at the time and place of the occasions under investigations in this trial, that the defendant was sane and thus responsible, after you consider the evidence, in such event, you would proceed to consider the other portions of the charge that I have given you or will give you.

I charge you, ladies and gentlemen, that a conviction must not rest upon suspicion, conjecture or possibility of guilt where all the facts and circumstances of the case and all reasonable deductions therefrom present two theories, one of innocence and the other of guilt. And, if you, the jury, so find, then you would be authorized to acquit the defendant. On the other hand, should you find that the State has proven beyond a reasonable doubt every material allegation in the indictment on one and two, then, in such

event, you would be authorized and should convict the defendant.

Now, ladies and gentlemen of the jury, the ultimate question and the only question which The Court submits to you at this time is the question of defendant's guilt or innocence of the two crimes charged. You would not concern yourselves with any other question save that of the guilt or innocence of the defendant of the two offenses charged: Count one, murder; Count two, armed robbery.

Now, ladies and gentlemen of the jury, upon retiring to the jury room, you should select one of your number to act as foreman or forelady of the jury who will preside over your deliberations and who will sign the verdict to which all twelve of you must freely and voluntarily agree. Your initial conduct upon entering the jury room is a matter of importance. It is not wise to immediately express a determination or to insist on a certain verdict. If your sense of pride is aroused, you may hesitate to change your position later, even if you decide you were wrong. You consult with one another. Consider each other's views. But ultimately and finally each of you must decide this case for yourself. But you should do so only after a discussion and consideration of the case with your fellow jurors. Do not hestitate to change an opinion if convinced you were initally wrong. However, you should never surrender your honest conviction or opinion just to be congenial with your fellow jurors.

You make an individual decision, and then all twelve of you return a unanimous verdict back to this Court that speaks the truth in this case.

Now, ladies and gentlemen, I charge you further that if I, as Judge of this court, have said or done anything during the course of this trial which indicated to you that I had a desire or perference as to which of these parties should prevail, either the State or the defendant, I want you to completely disabuse your mind of that. I cannot have and I do not have a desire or a preference in this case as to which party should prevail. It is my duty to see that this trial is fairly presented to you according to the law and leave it to you ladies and gentlemen of the jury to reach a fair and true verdict that speaks the truth in this case. The purpose of this legal investigation, as is the purpose of all legal investigations, is to find the truth. And I charge you that you return a verdict in this case that speaks the truth, without fear, favor, affection, or sympathy in this case.

Now, ladies and gentlemen of the jury, I charge you further that you consider all the evidence in this case. Don't consider part of it. You consider it all, and you consider the charge of The Court as a whole -- all of it; don't pick out some part of it-- as to one body of law to which you are bound in this case. Any repetition that did occur

did not occur for the purpose of emphasizing one part of it over the other, but simply to present it to you in an orderly manner. So you consider all of The Court's charge to you and you find the facts from the evidence in this case, and you apply to those facts the law that I have just given you in charge and you return a verdict in this case back to The Court that speaks the truth.

The form of your verdict would be, in addition to the form that I've already suggested to you, as to Count one: "We, the jury, find the defendant..." and you put in guilty or not guilty "...of murder." Count two: "We, the jury, find the defendant guilty or not guilty of armed robbery." And you date it and have it signed by your foreman or forelady, as the case may be. With these instructions, now I will ask you to go to your jury room, but do not begin your deliberations. Just go in there and rest for just a minute. Don't begin your deliberations until I send word for you to start. Thank you. You may go to your jury room. The alternate will remain.

Everyone remain seated now. Everybody don't start scurrying around until the jury gets in the jury room.

(The jury retired to the jury room at this time -- 3:55 p.m.)

(The following transpired at the Bench outside the presence of the jury:)

MR. KEEBLE: The only thing, I think on the suggested

APPENDIX G

IN THE SUPERIOR COURT OF BUTTS COUNTY

STATE OF GEORGIA

WILLIAM ALVIN SMITH.	:	
	:	
Petitioner,	:	
	:	
v.	:	
	:	
ROBERT O. FRANCIS,	:	Habeas Corpus No. _____
	:	
Warden, Georgia Diagnostic & Classification Center,	:	
	:	
Respondent.	:	

PETITION FOR WRIT OF HABEAS CORPUS

William Alvin Smith petitions this Court for a writ of habeas corpus pursuant to Ga. Code Ann. §50-127. In support of his petition he alleges the following:

1. The name and location of the court which entered the judgment of conviction under attack are:

Superior Court of Oglethorpe County,
Oglethorpe County, Georgia

2. The date of the judgment of conviction and sentence under attack is September 15, 1981.

3. The sentence under attack is that for the offense of murder petitioner be put to death by electrocution, and for the offense of armed robbery petitioner be imprisoned for life.

4. The nature of the offenses involved is that petitioner was convicted of one count of murder in violation of Ga. Code Ann. §26-1101 and one count of armed robbery in violation of Ga. Code Ann. §26-1902.

F. Denial of Due Process by the Establishment of a Conclusive Presumption of One Essential Element of the Offense of Murder
(Paragraphs 62-63)

62. The trial court's instructions to the jury concerning malice, given at the conclusion of the guilt-innocence phase of the trial, created a conclusive presumption of that essential element of the offense of murder, in violation of petitioner's right to require the State to prove beyond a reasonable doubt every element of the offense charged as guaranteed by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

Facts Supporting Petitioner's Claim
That He Was Denied Due Process
By The Establishment Of A
Conclusive Presumption

63. On the essential element of malice, the trial court instructed petitioner's jury as follows:

> Now, ladies and gentlemen of the jury, I charge you that a person commits murder when he unlawfully and with malice aforethought, either express or implied, causes the death of another human being. Express malice is that deliberate, intentional, unlawfully [sic] to take away the life of a fellow creature which is manifest by external circumstances capable of proof. Malice shall be implied where no considerable provocation appears and where all the circumstances of the killing show an abandoned and malignant heart.
>
> Count one of the indictment charges the offense of murder. I charge you that a person commits murder when he unlawfully and with malice aforethought, either express or implied, causes the death of another human being. Express malice is that of deliberate intention

> to take away the life of a fellow creature. Malice would be implied where no considerable provocation appears and all the circumstances of the killing show an abandoned and malignant heart. Legal malice is not necessarily ill will or hatred. It is the intention to unlawfully kill a human being without justification or mitigation, which intention, however, must exist at the time the killing is alleged, but it is not necessary for that intention to have existed for any length of time before the killing. In legal contemplation, a man may form the intention to kill a human being, do the killing instantly thereafter, and regret the deed as soon as it was done. In other words, murder is the intentional killing of a human being without justification or mitigation.

(Tr. at 335-336; emphasis added.)

G. Admission of Irrelevant and Prejudicial Evidence During the Sentencing Phase of Petitioner's Trial (Paragraphs 64-68)

64. The admission of irrelevant, prejudicial testimony from the decedent's stepson during the sentencing phase of petitioner's trial, constituting nothing but a veiled appeal to passion, prejudice and other arbitrary and extraneous factors, violated petitioner's right to a fair and reliable capital sentencing hearing, as guaranteed by Sections 2-101, 2-111 and 2-114 of the Georgia Constitution and the Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States.

Facts Supporting Petitioner's Claim That Irrelevant And Prejudical Evidence Was Admitted During The Sentencing Phase Of His Trial

65. The only evidence which the State presented during petitioner's sentencing hearing was the testimony

Facts Supporting Petitioner's Claim
That As Applied To Him The Section (b)(7)
Aggravating Circumstance Has Been
Construed In Unconstitutionally
Vague and Overbroad Fashion

84. Concerning the offense in this case, the evidence was clear that petitioner did not intentionally and gratuitously abuse the decedent before killing him; rather the decedent's injuries were inflicted during a brief struggle, and the decedent was rendered unconscious at the conclusion of that struggle.

85. Nothing in the facts of this case distinguishes the murder here, for purposes of applying the §(b)(7) aggravating circumstance, from the many kinds of murders which do not fall within the bounds of §(b)(7).

L. Cruel and Unusual Punishment
(Paragraphs 86-90)

86. The imposition of the death penalty on petitioner constitutes cruel and unusual punishment, in violation of petitioner's right to be free of such punishment under the Eighth and Fourteenth Amendments to the Constitution of the United States.

Facts Supporting Petitioner's Claim
That His Death Sentence Constitutes
Cruel and Unusual Punishment

87. Death is a disproportionately severe and therefore excessive punishment for a person, such as petitioner, who is a mental retardate with a mental age between ten and eleven years.

88. Application of the death penalty to persons as mentally retarded as petitioner is unjustified as a means of achieving any legitimate governmental end and is therefore excessive punishment.

89. Death is a disproportionately severe and therefore excessive punishment in petitioner's case, in view of the circumstances of the offense and petitioner's personal characteristics (including, but not limited to, his mental retardation).

90. The Georgia death penalty statutes, as interpreted and applied in general and in petitioner's case in particular, fail to assure consideration of mitigating circumstances by the sentencing body.

M. Denial of Constitutionally Required Appellate Review of the Death Sentence Imposed on Petitioner. (Paragraphs 91-97)

91. In its review on direct appeal of petitioner's death sentence, the Georgia Supreme Court deprived petitioner of the appellate review to which he was entitled by virtue of Ga. Code Ann. §27-2537(c)(3) and the Eighth and Fourteenth Amendments to the United States Constitution.

Facts Supporting Petitioner's Claim
That He Was Denied The Required
Appellate Review Of His Death Sentence

92. In its appellate review, the Georgia Supreme Court failed to consider or weigh mitigating factors, such as petitioner's mental retardation.

APPENDIX H

AFFIDAVIT OF DR. BRAD FISHER

I, BRAD FISHER, Ph.D., being first duly sworn, depose and say:

1. My name is Brad Fisher. I live at 108 Sidney Green Street in Chapel Hill, North Carolina. I am a licensed Ph.D. clinical-correctional psychologist. I am the Director of Fisher and Associates Research Center in Chapel Hill, which is involved in training and research primarily in areas involving the interrelationship between psychology and criminal justice. Since 1977, I have been teaching with appointments at both Duke University and the University of North Carolina. I have been asked by Stephen B. Bright and Stephen H. Glickman, attorneys for William Alvin Smith, to provide a comprehensive clinical evaluation of their client. In this affidavit, I will describe my qualifications, the manner in which the evaluation was conducted, and my findings.

2. My credentials include a Ph.D. received in 1976 from the University of Alabama, one of the two schools in the United States offering an American Psychological Association-approved clinical psychology program with a specialization in correctional work. This program was sponsored by the Law Enforcement Assistance Administration of the federal government, requiring 15 hours per week of work in correctional agencies throughout my training. In addition to this graduate degree, I received

my undergraduate training at Harvard University, from which I graduated cum laude with a thesis in corrections in 1972. I received a master's degree from Southern Illinois University with a thesis in correctional classification in 1973. Finally, I completed an internship that included work with the Ohio State Department of Corrections in their classification division. Since that time, I have worked as the assistant director of the Prison Classification Project, which worked to develop a statewide classification plan for the State of Alabama at the mandate of Judge Frank N. Johnson, and completed an evaluation with our staff of the 4,000 prisoners then in state correctional institutions in Alabama. Several of my publications from this time dealing with prisoner evaluation methods received national distribution and attention. I have also worked as the director of the maximum security juvenile institution in North Carolina (Dillon School), and as consultant to the National Institute of Corrections and the U.S. Department of Justice, as well as state and local agencies concerning methods for prisoner evaluation and correctional classification. My work in prisoner evaluation and classification has extended to approximately 30 states, and includes court testimony concerning these areas across the country over the last five years. Additionally, I have written numerous articles and books concerning the classification process, and methods for prisoner evaluation and the prediction of dangerous behavior (the subject of my Ph.D. dissertation). This has included the development of a model system for prisoner evaluation and reclassifi-

cation under a grant from the National Institute of Corrections, which involved an initial two-year full-time grant to write a report detailing these national guidelines, with the current third year being used in technical assistance towards guideline implementation in several states. Finally, I have been a member of the faculties of the University of North Carolina and Duke University, with classes, reports and presentations often specializing in these same areas. (See Vita attached hereto and incorporated herein by reference.)

3. I have performed evaluations and testified as an expert witness in a number of capital cases, including cases in North Carolina, Georgia, Florida, Mississippi, Louisiana, South Carolina, Arkansas, Nevada, and Virginia. In Georgia, these cases include State v. Richard Soto, State v. Marcus Riles, State v. William Anderson, State v. Gary Hawes, State v. Son Fleming, and State v. Andrew Legare. In addition, I performed an evaluation of nearly all Georgia prisoners on Death Row for the U.S. Justice Department in Daniels v. Zant. Furthermore, in Gutherie v. Evans I evaluated all protecive custody inmates at Reidsville, where mental retardation played a significant role in placement into protective custody. Several of the capital cases mentioned above have focused on the issues of mental retardation (i.e., North Carolina v. John Little) and how this condition relates to the various aspects of a capital case trial. I have testified with regard to questions of insanity, incompetence, ability to waive rights, and various

aspects of the makeup of the individual offender such as his developmental processes, the adequacy of social judgement and reasoning potential and other factors which may assist the court in understanding the reasons for the defendant's anti-social behavior and dealing with it.

Purpose of the Evaluation

4. The purpose of the examination was to provide a comprehensive clinical evaluation of William Alvin Smith. In particular, counsel asked whether there are aspects of William's development and character which might be considered potentially significant factors in mitigation on the question of the appropriateness of death as punishment for the murder in this case. Counsel asked me to decribe how I would explain William Smith's problems and limitations to a jury, and to provide them with an assessment of whether the testimony presented at William's trail was adequate to assist the jury in understanding William Smith in considering giving the death penalty. Counsel also asked for an assessment of whether William's mental limitations would affect his ability to understand his Miranda rights and make a knowing, voluntary and intelligent waiver of those rights.

Basis for the Evaluation

5. Preparation for the current evaluation statement is based on the following:

a. Client testing: An on-site testing session was conducted with William Smith on January 10, 1983. This included

tests in the intellectual, projective, and empirical personality inventory areas. These three areas provide the foundation for a comprehensive evaluation, with some areas of overlap for the purposes of reliability (i.e., measurement of level of intellectual functioning). They are generally described below:

(1) Intellectual: Tests in this area include IQ tests, and closely related evaluations of achievement in different school related areas, (i.e., mathematics, spelling, reading comprehension, and the like). These had been previously administered to William as early as 1973, and current findings varied very little from previous assessment conclusions.

(2) Projective: The purpose of these tests is to provide insight into indulging psychological processes (i.e, motivation styles, frustration tolerance, and unconscious processes) through analysis of responses to various ambiguous stands. These tests also provide further insight into limits and styles of intellectual processes (i.e., ability to use abstract rather than concrete cognition). For the current evaluation, the Thematic Apperception Test and the Rorschach test were utilized. The former employs drawing of persons and situations allowing multiple story interpretations (what is happening in the picture, who are the people, how do they feel, what will happen in the future). The latter employs inkblots for similar purposes with more vague stimuli.

(3) Empirical personality: Tests in this category (i.e., the partial Minnesota Multiphasic Personality Inventory) provide an assessment of personality characteristics from an acturial standpoint. Consequently these features (i.e., depression, anxiety, etc.) may be objec-

tively considered. This test also utilizes there validity scales, allowing the examiner to determine if manipulation or "conning" is present.

In addition, a clinical interview was conducted. Subsequent to this interview and testing, the results were scored and provide in part the foundation for the current evaluation findings. It should be noted that this session was conducted at the Georgia Diagnostic and Classification Center in Jackson.

b. An on-site evaluation of William Smith's home environment was conducted, including interviews with his father, an on-site evaluation of the father's work environment, an interview with the mother, and an interview with other siblings and peers in and around his actual home. These interviews and on-site home environment evaluations are a critical feature of the overall assessment. This is especially true in this case, where developmental aberrations and disturbances may play a major role in defining the client's current characterological make-up. In this case, where previous testing (including my own) suggested developmental deficiencies, this permitted a "real world" reliability check on these initial test perceptions through questions concerning his actual past functioning.

c. Testimony and related legal documents from William Smith's trial were reviewed, including:

(1) Testimony of Mr. Gay (high school principal);

(2) Testimony of Dr. Everett Kugler (the doctor giving previous testing, then superintendent of the Georgia Regional Hospital in Augusta);

(3) Testimony of William's mother, aunt and girlfriend at sentencing hearing;

(4) William's testimony;

(5) Testimony of the sheriff and deputy sheriff at the pre-trial hearing of September 1, 1981, describing the circumstances of William's waiver of his rights;

(6) The statement of rights and acknowledgement forms introducted at the motions hearing and/or the trial;

(7) Handwritten and typewritten copies of William's statement.

d. The evaluation also included a review of previous test data, including school records, intellectual testing, the Oglethorpe examination for achievement levels, the Wechsler Intelligence Scale for Children (WISC) given in 1973, and various other tests (House-Tree-Person test (HTP), and Metropolitan Achievement Test).

Findings

6. Narrative Overview Decription

William Smith is a 23-year old black male currently at the Georgia Diagnostic and Classification Center in Jackson. William was born and raised in the small town of Lexington, Georgia in Oglethorpe County. His mother and father are both hard-working and well respected members of this community. The father has worked at the same local Minit Serve Food Market job (day shift) for the last twenty years, and has held a second full-time job for a similar length of time as a maintenance operator at a local university. William has had problems with learning and retardation since an early age, with initial

special intellectual and achievement testing dating back to age 13 (1973). Initial recommendations for placement in educable mentally retarded (EMR) classes date back to the same time. These findings of retardation and developmental deficiencies are supported not only by this initial testing, but by descriptions given from his parents, peers, and siblings concerning his inability to function in the school setting. In addition, these interviews, as well as the testing, gave further demonstrations of features in his character often associated with retardation. These include strong dependency features, the expected tendency to be frustrated by more than the non-retarded person, the inability to properly vent this frustration, and impaired social judgment.

7. Current Offense Interview Findings

It should be noted at the outset that the current interview required a very careful and slow process of questioning. William Smith was quite willing to respond to all questions, yet these had to be given in very simple form to avoid the frustration and concomitant anxiety and confusion that often results from a normally paced interview. With this backdrop, the following features seem especially noteworthy in his description of situational components in the days surrounding the commission of the crime. First, it should be pointed out that one of the most important people in William's life at this time was his girlfriend. He described her as the first person near his own age who had really cared about him, and this had taken

on extraordinary importance in his life. With this in mind, the fact that he had broken up with his girlfriend in the two days previous to the crime appears significant. His own description of this event included his feelings of total frustration and confusion over what to do about the breakup.

A second factor revolves around the destruction of William's car the day before the crime. This automobile was his first material possession of consequence, and a major feature relating to his self-esteem and feelings of self-worth. It should be noted that at the time the car was destroyed he did not have a license, and the car was not paid for. This served to further heighten his level of frustration and resultant confusion because of his inability to deal with that frustration. Still another issue in this area is that the day before the crime he was stopped by the deputy sheriff who, although he knew that William did not have an operator's license, did not take him in.

If one was to rank the two most important things in William Smith's life, these would probably have been his girlfriend and his car. To have both of these taken away at the same time would have been traumatic for anyone; however, with his primary psychological dynamics including major limitations in his ability to deal with frustration, as well as easily formed frustration and confusion over typical life experiences not confusing to those not mentally retarded, these events take on special significance. For a person with William's level of

retardation, it is important to have a simple, straightforward, and consistent foundation upon which to operate. In his case, the two critical ingredients of this somewhat shaky foundation had been removed, which brought into play the limitations connected with his retardation, much more than would have been the case for a person with normal intellectual functioning, frustration tolerance, and ability to not become confused by outside stimuli.

8. Intellectual Test Findings

The findings of this evaluator demonstrated a full-scale IQ of 65. This was further supported by material obtained in the visual motor Gestalt test (Bender), as well as by the type of stories given and responses to stimuli in projective testing (in these latter areas, he was never able to move from totally concrete and specific answers into any kind of abstraction). It is important to note that the findings of the current evaluation are totally consistent with the previous findings of evaluations of William Smith in school and before trial (i.e., with an IQ falling within the 65-70 full-scale range). In addition, the current findings are consistent with the previous achievement scores, demonstrating that William Smith falls an average of five years below grade level at a minimum in all subjects. These findings indicate that William does indeed fall within this mental retardation range. This is further supported by both my tests and previous tests, indicating consistent

achievement scores (i.e., in mathematics, spelling, reading, and the like) several years below his age level. For example, it is interesting to note that on the Oglethorpe examination given in 1974, it was noted that William had achieved only one of the 40 objectives. This is consistent with the current findings, and is also reflected in achievement scores varying between 2.0 (reading) and 4.1 (language expression). The presence of this level of mental retardation indicates much more than just slow learning; it indicates impaired social judgment, impaired ability to understand or acknowledge the consequences of behavior, impaired ability to make rational judgments, increased dependency features, susceptibility to confusion and anxiety in stressful situations, tendency toward more impulsive behavior (this often based on the condition in which the retarded person has more frequent frustrations with the many situations that are confusing and complex to him or her, without the ability to appropriately vent that frustration) and some diminished capacity to distinguish between right and wrong. This latter category is different from an inability to distinguish between right and wrong that may be the case where the insanity issue is involved.

Although there have been consistent and pervasive findings of mental deficiency since William Smith was initially diagnosed and tested in 1973, it is also important to reflect on other areas where testing did not reveal significant mental

disturbance. In this category, I would note that my tests did not reveal the presence of significant organicity, or a psychotic process. A finding in either of these would have been critical if insanity had been the most appropriate defense; however, this condition did not exist for this client, and consequently this approach would not have been appropriate.

Finally, it should be noted that my clinical interview with William suggested extreme difficulties in comprehension and ability to follow my questions, which is consistent with his serious level of retardation. This was further reinforced by my interview with his mother, father, and siblings, who indicated that this had been his nature since childhood. They all noted that instructions and tasks that could be given just once to one of the other children would have to be given slowly and several times in William's case.

9. Significance of the Findings

a. In the first place, it should be noted that mental retardation is a condition having frequently profound, yet somewhat complicated effects on a person's character, behavior, and overall adaptation to his environment. At the same time, this is paralleled with a frequent misunderstanding of these effects of retardation on a client by lay personnel, and extending to juries and legal personnel in the current case. By this, I am referring to the frequent misperception that retardation is only "slow learning" and nothing more. Because of

this, there is a strong need for the professional to give an explanation to jury members or others involved in the evaluation of the extent and ramifications of the retardation in the individual case being considered. This is essential in cases such as this where a significant degree of retardation is involved, because of these major effects in critical areas (i.e., ability to know the difference between right and wrong, other social judgment areas, the ability to appreciate the significance of one's acts, the ability to aid an attorney in one's defense, Miranda issues, and the like).

b. Both in cases where I have performed evaluations and in research concerning other testimony in capital cases, mental retardation and related limitations are important mitigating features. For example, post-trial interviews have been conducted in a number of cases with this conclusion on the part of the jury, as well as results of the evaluation that I performed in John Wilson's case in North Carolina.

c. The characteristics that are often coupled with retardation, and which are present in the case of William Smith, are critical in understanding his behavior in commiting the offense currently under consideration and in making the decision between life and death. There are several component features here, including his increased capacity to be frustrated, coupled with his decreased ability to handle that frustration in appropriate ways, his dependency features in relation to the giving of a confession to a police officer whom

he knew well (i.e., perceiving him as an authority figure for whom he should do anything requested), and similar aspects of his character that demonstrate that he should not be held to the same standards as others because of these limitations beyond his control. In addition, other important factors, such as his potential for prison adjustment, have not previously been considered in this case although there is sufficient data for meaningful professional comments and predictions in this area.

d. Because of his extreme difficulties in comprehension and communication described in the foregoing section, William Smith operated at a substantial disadvantage in court, especially in testifying in his own behalf. My research in this area discloses that other disturbances, such as the psychopathic personality, are much more able to defend themselves through being able to understand issues concerning their own presentation, appearance, and the like in presenting their case, as well as their ability to be less quickly confused or intimidated by the courtroom process. However, in the case of retarded defendants, the person is much more likely to become confused and intimidated by the courtroom process and to have no way to vent this frustration in the process I noted in the paragraphs above. Consequently, inappropriate responses, such as withdrawal or angry acting-out, may be the result. In addition, the retardate will have much less ability to understand or communicate with the attorneys concerning his own testimony, with difficulty in communication causing him to be

perceived as unwilling, rather than unable, to communicate with the jury while on the stand. This is cetainly supported in the current case, where my interview with William Smith in the Jackson Diagnostic Center had to be conducted extremely slowly and carefully, with several breaks given so that the confusion of my questioning did not frustrate him and cause him to withdraw or to become totally disoriented. In this instance, it is also important to note that during my interview he demonstrated considerable remorse, both in his clinical responses to my questions and in his responses to the projective materials. This is important because it is quite possible that the deficiencies I have noted which would have made it difficult for him to appear as his own witness would also have resulted in an inability to show any remorse in a situation as complex (and consequently frustration-provoking for him) as the courtroom process. In previous cases in which I have participated or researched, this inability to communicate, combined with a low level of frustration tolerance and communication difficulties, has often been misunderstood as recalcitrance, lack of remorse, and similar inappropriate behavior by a jury when given only a momentary and superficial glimpse of the defendant, without a proper explanation of the clinical condition (in this case, retardation).

e. At William Smith's trial, only the insanity and competence questions were touched on at all, and then quite briefly and inadequately. It is absolutely inappropriate to

look at the serious mental limitations (retardation) that have been documented for William Smith since 1973, and limit their importance to the question of whether he knew the difference between right and wrong. In this particular case, there appears to be undebated information dating back to his childhood of significant retardation and developmental problems that relate in a much more pervasive and undeniable way to issues of mitigation and waiver of Miranda rights that were not even considered in the trial.

The most striking feature of the testimony in the original case was that this undebated retardation was not connected to the social problems and deficiencies I have described for the purposes of the jury's understanding of the importance of these limitations in William Smith's case. Whereas the presence of psychosis and the extent to which it affects many critical areas of affect and intellectual functioning is generally widely debated, the effect of this level of retardation in the areas I have described is well accepted and documented in most introductory texts on this topic. If the IQ had been substantially higher (i.e., 80 or above), it could have been argued that the issue was just "slow learning," or that he was affected by cultural deprivation, rather than a serious level of retardation affecting judgment and awareness areas. However, this simply is not the case in the current situation.

The lack of attention to these critical deficiencies can be explained in part by one inaccuracy in the testimony at

trial. Dr. Kuglar properly notes William's IQ category (Full Scale 65), yet suggests that 10% of the population falls within this category. In fact, the book written by the developer of the Wechsler Intelligence Test states that only 2.2% of the population falls in the 65 or below category. (Wechsler's Measurement and Appraisal of Adult Intelligence, 5th ed., 1970, p. 125.) This point is also important because of the previous testimony by the school principal (Mr. Gay), in which he implies to the jury that William would have have been appropriate for placement in the class for educable mentally retarded students because of the changes in EMR cutoff scores. The more recent testing by Dr. Kugler (mirrored by my own findings) indicates an IQ of approximately 65, which is below both the new and the old cutoff scores, and consequently refutes Mr. Gay's contention. However, this point appears to have been lost to the jury. It should be noted in this context that Dr. Kuglar was never asked to explain what an IQ is, what it measures, what average scores mean, or the other data critical to giving someone a sense of the meaning of a particular IQ or achievement score.

The lack of attention to these deficiencies can also be attributed to the fact that the only issues considered at the trial were insanity and competency. Since William Alvin Smith was competent to stand trial and not insane at the time of the offense, limiting the testimony to these questions prevented the jury from hearing about the other limitations I have

described and which have consistently been found regarding William Smith.

f. Waiver of Miranda Rights

The following assessment is based on the standard that a person needs to understand his rights and make a knowing and intelligent relinquishment of those rights and privileges in giving a valid confession. I have subdivided my comments into general comments about William's mental limitations relating to these standards, with a second section detailing situational components at the time of the crime that may have affected his ability to understand his rights and properly relinquish them during his confession.

i. Overview of Mental Limitations Relating to Waiver of Rights

Both the current testing by this evaluator and the testing dating back to 1973 demonstrate the overall functioning in the retarded range (Full Scale 65-70). In addition, current and previous testing indicates exceptionally low achievement scores, typically falling several years below expectations for William's age level. Within this analysis of achievement capabilities, it is specifically important to note that his reading and English abilities were especially low. This includes information from tests dating back to 1978 (9th grade), in which he scored in the first percentile in reading (where 99 out of 100 would do better than he did), and in the second percentile in English (where 98 out of 100 would do better than he did). With this in mind, it is probable that his ability to comprehend the advice he received concerning his

rights was insufficient. In particular, I would note that the statement of rights includes language such as "consult with lawyer" (#3) and "absolute right" (#5). In addition, in his acknowledgement and waiver of rights, the language includes "no persuasion or coercion" where the same question concerning his ability to understand this language is appropriate.

Finally, it is important to note that his achievement deficits are not limited to reading and English abilities, but relate to an overall retardation that also affects areas of verbal comprehension, memory, reasoning abilities, and similar skills that would be essential for making a realistic acknowledgement and waiver of his rights, and in properly giving a statement. I have discussed in some detail earlier in this affidavit the current psychological evaluation reflecting these deficits as found in the intellectual testing and corroborated by aspects of the projective testing, the clinical interview with William Smith, and interviews concerning his past behavior and development from his family and peers in his home environment. When this is put together with the previous testing dating back to 1973 and 1974 demonstrating these deficiencies, the question concerning his ability to comprehend the advice he received about his rights, as well as his ability to understand the significance of waiving his rights, is certainly in doubt.

In addition to the general comments above concerning William's overall limitations and their effect on his understanding the waiver of rights, there are several situational components of the process resulting in his statement that raise

further questions in these areas. These are discussed below.

ii. Situational Components

The current evaluation has several times noted the dominance of dependency features in the character of William Alvin Smith. These dependency features leave him looking for sources of guidance and direction, especially at times when he is frustrated and consequently confused and disoriented. The situation at the time of his arrest provided just these circumstances, with the addition of the presence of an officer familiar to him from childhood as the source of guidance and direction. The general situation at the time of his arrest was late at night (nearly midnight), and that he was in a state of hunger and exhaustion (transcript, p. 88). At this point his already extreme confusion, disorientation, and need for direction, were further exacerbated by his placement away from the local county jail in a jail located in another county. From here he was placed in a private cell and kept totally incommunicado for the next 12 hours. During this time, it is my opinion that his confusion, disorientation, and need for direction were even further accentuated by the fact that he spent this time alone without any information at all relating to his status. Finally, William was given food and at the same time presented to Sheriff Gene Smith, whom he had known since childhood. From a behavioral scientist's point of view, this sets up nearly a total situation where the dependency could be expected to be funneled toward this authority feature, where William Smith would have done everything he could do to try and please this single source of reinforcement and guidance, in the midst of nearly total confusion, isolation, and deterioration.

iii. Summary of Miranda Issues

Based on the above general statement concerning his limitations, coupled with specific situational components relating to these limitations, it is my opinion that William's confession was extracted without a valid, knowing, voluntary and intelligent waiver of his rights. This opinion is based on the fact that his mental retardation did not permit him to understand either his rights or the significance of the waiver of these rights. In addition, his exhaustion at the time of his arrest, coupled with transport to a non-local jail, subsequent 12 hours of isolation, and final introduction to an officer who had known him since childhood (calling him "Noodle" in the transcript), resulted in a situation where William Smith would have gone to great lengths to accommodate this officer. His confusion and deterioration had been maximized at this point, and the dependency features were at a peak when Sheriff Smith arrived. This is not the kind of situation that would have permitted an intelligent waiver of his rights, or permit understanding of his rights before giving a statement.

FURTHER AFFIANT SAYETH NOT.

Brad Fisher
BRAD FISHER, Ph.D.

Subscribed and sworn to before me this the 28th day of March, 1983. Witness my hand and notarial seal.

Robert G Morris
Notary Public
Notary Public, Georgia, State at Large
My Commission Expires Dec. 15, 1985

CURRICULUM VITAE

NAME: R. Brad Fisher

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EDUCATION:

B.A. Psychology, Harvard University, Cum Laude, Cambridge, Massachusetts, 1972;
Thesis: Juvenile Community Corrections in Massachusetts

M.S. Psychology (Clinical Program), Southern Illinois University, Edwardsville, Illinois, 1973
Thesis: Differences in motivational factors among two classifications of delinquents.

Ph.D. Psychology (Correctional-Clinical Program) APA
University of Alabama, 1976
Predictions of dangerousness for delinquents in relation to quantity of data, authoritarianism, and dogmatism (Stan Brodsky, chairman)

Internship Ohio State University Hospitals and Ohio Department of Corrections - APA Program (Adolescent specialization)

PROFESSIONAL EXPERIENCE:

Director, Fisher and Associates Research Center, Chapel Hill, North Carolina. Administration of grants and contracts for training and research primarily in areas interfacing psychology and criminal justice. Examples of sponsors include U. S. Department of Justice, North Carolina Administrative Office of the Courts, and the National Institute of Mental Health. 1979 - present.

Director of Clinical Services, to Acting Director and Consultant, Dillon Youth Center, Butner, North Carolina. Research and clinical services for unit with 100 residents, including both emotional and behavioral disturbances. Fall, 1977 to present.

Assistant Professor of Psychology, University of North Carolina. 1977 - present.

Assistant Professor of Psychology, University of Alabama, 1976-77.

Assistant Director, Prison Classification Project. Research and psychological assessment of Alabama's prison population directed by the University of Alabama's Psychology Department. 1976-77.

Associate Editor, Law and Psychology Review, University of Alabama. November, 1973 - August, 1975.

EXAMPLES OF TEACHING EXPERIENCE:

Adolescent Psychology, University of North Carolina.

Personality, University of North Carolina.

Law and Psychology, with Stan Brodsky, University of Alabama, 1976.

Introductory Helping Skills, University of Alabama, 1977 (a course emphasizing video-tape feedback for skill development).

Audio-Visual Media in Psychology Research and Instruction, University of Alabama, 1976-77.

Introductory Psychology, University of Alabama, 1974-76.

Group Processes, Southern Illinois University, 1973.

Treatment issues for the violent adolescent. Two-day workshop series for accreditation to North Carolina juvenile judges. Asheville, Greensboro, and Durham, NC, 1981.

Serious juvenile offenders. Three-day workshop series to North Carolina court counselors. Asheville, Greensboro, Durham, Greenville, NC, 1980-81.

EXAMPLES OF RESEARCH EXPERIENCE:

Fisher, B. Prediction of Dangerous Behavior for Adolescents. In Clinical Issues for Dealing With Aggressive Youth. Macmillan Books, in press.

Fisher, B., & Brodsky, S. Public Policy and the Prediction of Violence. Pergamon Press, in press.

Fisher, B. The psychologist as an agent of social change. Proceedings of the 89th Annual Convention of the American Psychological Association, 1981. In press.

Fisher, B., Solomon, L., Friedman, J., and Baird, C. Classification: Principles, Model and Guidelines. Publication of the U. S. Department of Justice, National Institute of Corrections, 1981.

Fidler, D., Andreson, J., and Fisher, B. Gretel: Issues for Treatment in Psychotherapy. Health Science Consortium, Department of Psychiatry, University of North Carolina, 1981.

Fisher, B., Popiel, D., and Kozub, D. Civil commitment of Minors. In Mental Health and the Law. Published by the Community Mental Health Law Project, Newark, N.J. 1980.

Fisher, B., Craddock, A., and Perrin, J. Classification Evaluation and Guidelines. U. S. Department of Justice, National Institute of Corrections, 1981.

Fidler, D., Alexander, S., and Fisher, B. The Minotaur. Proceeding of Annual Meeting of the American Psychiatric Association, Chicago, May, 1979.

Fisher, B. and Fowler, R. Psychologists in a community-action program. Southern Exposure, Fall, 1978.

Brodsky, S., and Fisher, B. Some problems in establishing an effective classification system. Proceedings of the National Institute of Crime and Delinquency, initially presented at the Annual Convention, Miami, June, 1978.

Fisher, B. and Brodsky, S. Uses of audio-visual media in psychological research and instruction. Teaching of Psychology, 7, 1, 1978.

March, R. and Fisher, B. Alabama Bound. Tuscaloosa: University of Alabama Press, 1977 (photographic essay).

Fisher, B., Mullin, C. and Farmer, M. Team Defense. Innovations, 5, 3, Spring, 1978.

Fisher, B. Fences. AACP Newsletter, December, 1977.

Brodsky, A. and Fisher, B. An analysis of sex-bias in psychotherapy: Seven scenes. Proceedings of the 85th Annual Convention of the American Psychological Association, 1977.

Fisher, B., Brodsky, S., and Corse, S. Monitoring and classification guidelines and procedures, Center for Correctional Psychology, 35, May, 1977.

Fisher, B. and Corse, S. A classification handbook. Center for Correctional Psychology, University of Alabama, 32, March, 1977.

Fisher, B., and Brodsky, S. Prison Classification Project: Summary and materials. Center for Correctional Psychology, 31, January, 1977.

Fowler, R. and Fisher, B. Prison notes. APA Monitor, 7, 9, October, 1976.

Fisher, B. and Rogers, B. Motivational factors for two juvenile diagnostic categories. Phillips Brooks House, Harvard University, 8, 1, June, 1972.

Melvin, K. B., Fisher, B., and Corse, S. The Chalkville Institution for Girls: A demographic study. Continuing Education Center, University of Alabama, 20, June, 1975.

CONVENTION PRESENTATIONS AND WORKSHOPS:

Fisher, B., and Varley, W. Behavior management with the aggressive adolescent. National Conference on the Aggressive Adolescent, Duke University, October 30, 1981.

Fisher, B. Effects of overcrowding in prison. Presentation to North Carolina Council on Alternatives to Incarceration, Chapel Hill, NC, October 14, 1981.

Fisher, B. and Fidler, D. Dealing with extreme stress in teenagers. Videotape and lecture to the North Carolina Council of Family and Marriage Therapists. Boone, NC, September 1981.

Harris, H. and Fisher, B. Treatment issues for the violent adolescent. Two-day workshop series for accreditation to North Carolina juvenile judges. Asheville, Greensboro, and Durham, NC, 1981.

Fisher, B. The importance of milieu in treatment of the aggressive adolescent. Presentation to Wright School, May 12, 1981.

Fisher, B. Serious juvenile offenders. Three-day workshop series to North Carolina court counselors. Asheville, Greensboro, Durham, Greenville NC, 1980-81.

Fisher, B. Behavioral management of the violent adolescent. Presentation at conference dealing with the serious juvenile offender. The Institute of Government, Chapel Hill, NC, October 13, 1980.

Harris, H. and Fisher, B. Developmental concepts for normal and abnormal adolescence. Presentation to the Federal Correctional Institution, Butner, NC, September 28, 1980.

Harris, H. and Fisher, B. Screening, evaluation, and referral for disturbed youth. Presentation to Conference on Adolescence by the Administrative Office of the Courts, Asheville, NC, July 14, 1980.

Fisher, B. Changing perspectives in dealing with disturbed youth. Presentation to Memphis State University Conference on Adolescent Development. Memphis, April 22, 1980.

Fisher, B. The prediction of violence. Presentation to Annual Meeting of Florida District Judges, February 31, 1980.

Fisher, B. The uses of video-tape in psychological research and instruction. Two-day workshop for psychology students, University of North Carolina at Chapel Hill, July 14 and 15, 1979.

Fisher, B. Changing trends in adolescent violence. Capital Health Systems Conference on Adolescent Issues in North Carolina, Raleigh, June 10, 1979.

Fidler, D., Alexander, S., and Fisher, B. The Minotaur. A presentation at the Annual Meeting of the American Meeting of the American Psychiatric Association, Chicago, May, 1979.

Fisher, B. Some models for adolescent residential treatment. A paper presented to the South Central Mental Health Conference, Fayetteville, April, 1979.

Fidler, D., Fisher, B., and Alexander, S. Dobro - A case study of visual memory loss in an adolescent. A video-tape presentated to the Association for Academic Psychiatry, Charleston, March, 1979.

Fisher, B. and Kearney, G. Divergent concepts of death in violent and non-violent youth. A paper presented to the symposium "The Child and Death" (NIMH), New York (Columbia University), January, 1979.

Fisher, B. Treatment of the multi-handicapped child in residential settings. A paper presented to the North Carolina Education Association, Boone, October, 1978.

Fisher, B. Developing a clinical interview for the adolescent in mental health settings. Paper and video-tape presentation at the CPI Conference on Adolescence, Raleigh, September 1978.

Fisher, B. The community as a resource for the development of residential settings for adolescents. Presentation to the Community Mental Health Law Project, Newark, N.J., January, 1978.

Fisher, B. Program considerations for children in residential centers with developmental disabilities. A paper presented to the annual convention of the North Carolina Disabilities Council, Wilmington, April, 1978.

Fisher, B. Making your client more human. A paper presented to the Association of Criminal Defense Lawyers, St. Simon's Island, March, 1978.

Brodsky, S. and Fisher, B. Psychology at the interface of law and corrections. Paper presented at the meeting of the American Sociological Convention, Atlanta, November, 1977.

Fisher, B. Some problems in the prediction of dangerous behavior. Paper presented to the Prison Crisis Mobilization Network, Columbus, October, 1977.

Fisher, B. and Brodsky, S. Handling the emotionally disturbed adolescent in a crisis situation. Paper presented to the Law Enforcement Academy, Tuscaloosa, July, 1977.

Fowler, R. D., and Fisher, B. Academia in community application. A video-tape and slide presentation presented at a Florida State University symposium, Tallahassee, April, 1977.

Fowler, R. D., Brodsky, S. and Fisher, B. The prison classification experience: Psychology at the interface of law and corrections. Paper and slide presentation at the Psychology Speaker Series, University, Alabama, March, 1977.

Brodsky, A. and Fisher, B. Sex-bias in therapy: Seven scenes. Paper and video-tape presented at the meeting of the A.P.A. Division 29, Orlando, Florida, Rebruary, 1977.

Prentice-Dunn, S. and Fisher, B. Graduated guidance with retarded children. A video-tape presented at the Partlow State School, February, 1977. Library catalog J-67-71.

Fisher, B. The applications of the MMPI to an adolescent population. Paper presented to the Ohio State University, Department of Psychiatry-Grand Rounds, Columbus, Ohio, December, 1975.

Fisher, B. Art therapy utilization with an in-patient child population. Paper and slide presentation delivered to the Department of Child Psychiatry, Ohio State University Hospitals, Columbus, Ohio, October, 1975.

RESEARCH AND TRAINING VIDEOTAPES:

The following is a list of video-tapes used for training in the North Carolina Department of Psychiatry under the overall direction of Dr. Donald Fidler. Although developed primarily for training at the University of North Carolina School of Medicine, they have been distributed for training elsewhere by the Health Science Consortium and are produced by the Medical Sciences Teaching Laboratories in Chapel Hill.

Gretel: Issues for Psychotherapy: Training and description of critical stages and components of psychotherapy. One hour, color, 3/4" cassette, 1981.

Moonstones: Dramatic presentation of issues encountered by the psychiatric resident in dealing with a serious adolescent offender. One hour and thirty minutes, color, 3/4" cassette, 1981.

Evaluation and commitment: For training in cases involving involuntary commitment. 20 minutes, color, 3/4" cassette, 1980.

Hypnosis: Training tape in issues for hypnosis in psychiatric training, including historical perspective. 30 minutes, color, 3/4" cassette, 1980.

The Mental Status Interview: Presentation of actual cases carrying different DSM III diagnoses. Adult patients from Dorothea Dix Hospital, adolescent patients from Dillon School. Each case approximately 20 minutes, color, 3/4" cassette. 1980.

Minotaur: Training tape for issues related to the violent patient. 55 minutes, color, 3/4" cassette, 1979.

Dobro: Presentation of case involving neurological impairment in an adolescent. 22 minutes, color, 3/4" cassette, 1979.

PROFESSIONAL AND JOURNAL AFFILIATIONS:

Center for Early Adolescence, Chapel Hill, NC (fellow) 1978 - present
Capitol Health System's Advisory Council; Task Force on Juvenile Justice (member) 1978-80.
N.C. Council of Child Psychiatry, Task Force on the Aggressive Adolescent (member)
Adolescent Day Treatment Program; Community Guidance Clinic, Duke University (advisory board member)
Orange County Youth Task Force (member)
Article Review Editor, Criminal Justice and Behavior, 1976 - present.
American Psychological Association (member)
American Association of Correctional Psychologists (member)

Southeastern Psychological Association (member)
North Carolina Psychological Association (member)
American Association for Educational Media Specialists (member)

EXAMPLES OF EXPERT WITNESS TESTIMONY
AND EVALUATION:

1981:

Centerino v. Wilson, C.A. C80-0545-L(J) (W.D. Ky.). Evaluation concerning effects of classification and overcrowding in Kentucky women's prison system.

Chapman v. Clark, C.A. 79-3192 (D.C. N.J.). Evaluation concerning classification and effects of overcrowding in Jersey City Jail.

Duran v. Apodaca. Ongoing evaluation for U.S. Department of Justice, National Institute of Corrections, and revision of state classification processes pursuant to consent decree entered 8/1/80. (1980-present)

Florida v. Morgan. Evaluation and court testiomony concerning prison adjustment, Ft. Lauderdale.

Florida v. Valle. Evaluation and testimony concerning prison adjustment and violence potential, Miami.

Grigsby v. Arkansas, PB-C-78-32 (E.D. Ark.). Court testimony and report concerning possible jury selection bias in capital case process, Little Rock (1979-81).

Grubbs v. Bradley. C.A. 80-3404 (M.D., Tenn.). Evaluation and testimony concerning classification for the Tennessee Department of Corrections.

Kendrick v. Carroll. Evaluation of classification processes and prison conditions for U.S. Department of Justice (1979-81).

Louisiana v. Clark. Testimony concerning mental competency, New Orleans.

Lovell v. Brennan, C.A. 79-76 (S.D. Me.) Evaluation and testimony concerning classification practices in Maine State Prison, Portland (1980-81).

Maginnis v. O'Callaghan, C.A. 77-0221 (D. Nev.). Initial evaluation of classification and prison conditions (1979) with 1981 follow-up in Nevada State Penitentiary.

Mississippi v. Gilliard. Evaluation and testimony concerning prison adjustment and the potential for dangerous behavior, Laurel, Mississippi.

Ruiz v. Estelle. H-78-987-CA (S.D. Tex.). Evaluation and testimony concerning overcrowding and classification in Texas for U.S. Department of Justice (1979-81).

1980:

Daniels v. Zant. C.A. 79-110-MAC (M.D. Ga.). Evaluation of classification concerns for Death Row inmates in Georgia, U.S. Department of Justice.

Georgia v. Anderson. Evaluation and testimony concerning prison adjustment.

North Carolina v. Cherry. Evaluation and testimony concerning prison adjustment.

North Carolina v. McDougal. Evaluation and testimony concerning prison adjustment.

Trigg v. Alexander. C.A. 73-714-CA (M.D. Tenn.). Evaluation of state classification process through the U.S. Department of Justice, National Institute of Corrections.

Willie M. v. Hunt. Testimony in juvenile class action suit concerning treatment, conditions of confinement, and due process issues.

1979:

Arkansas v. Little, PB-C-78-32 (E.D. Ark.). Report concerning competency and danger potential of juvenile.

Florida v. Dougan. Testimony provided concerning prison adjustment potential and custody recommendations.

Florida v. Harris. Report (psychological and classification evaluation) provided to court at its request.

Florida v. Knight. Testimony and report concerning prison adjustment potential for clemency hearing.

Georgia v. Jordan. Evaluation report of effects of prison conditions as mitigating circumstance in this capital case involving prisoners' rights.

Georgia v. Lemley. Testimony concerning classification recommendations and future prison adjustment potential.

Laaman v. Helgemoe, 437 F. Supp. 269 (D. N.H., 1977). Report after investigation of classification processes at the New Hampshire State Prison.

North Carolina v. Clark. Report provided to defense counsel concerning potential for future prison adjustment.

North Carolina v. Taylor. Testimony about violence potential and prison adjustment recommendations.

Oklahoma v. Hamilton. Testimony concerning classification recommendation and prison adjustment potential.

Rhodes, C.A. C2-78-220 (S.D. Ohio, 1979). Consultant to U.S. tment of Justice concerning classification processes and conditions at hio Reformatory.

atsaris et al., T.C.A. 78-0931 (N.D. Fla.). Effects of specific prison tions testimony (lighting).

Hawes. Provided psychological profile for juvenile in capital case.

Riles. Prisoner adjustment potential testimony.

lina v. Almanza. Prison adjustment potential testimony.

lina v. Avery. Prisoner adjustment potential testimony.

lina v. Barber. Prison adjustment potential testimony.

v. Garrahy., 7432 (R.I.) Effects of prison conditions report and ony as consultant to U.S. Department of Justice.

ina v. Simpson. Competency evaluation.

v. Maryland. Consultant to court providing information on right to ent suit within Maryland's prison system.

Flemming. Testimony concerning jury selection processes for this

Willis. Predictions concerning prisoner violence potential.

lina v. Carter. Testimony concerning predictions of danger potential.

Alabama, 559 F.2d 283 (5th Cir. 1977), cert. denied 98 S. Ct. 3057 ; receiver appt'd, 446 F. Supp. 628 (M.D. Ala.). Testimony concerning er adjustment in class action right to treatment litigation.

OF GRANT ADMINISTRATION

project director for grant from the National Institute of Corrections, Department of Justice, to develop classification principles and national . 1979-present, $80,000/annum.